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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,392	06/28/2004	Georgi Asenov Michev	DPL-2	4454
20808 7590 11/27/2007 BROWN & MICHAELS, PC 400 M & T BANK BUILDING 118 NORTH TIOGA ST ITHACA, NY 14850			EXAMINER STULII, VERA	
			ART UNIT 1794	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/500,392	Applicant(s) MICHEV, GEORGI ASENOV	
	Examiner Vera Stulii	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,7,8,10-12,14-17,24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,7,8,10-12,14-17,24 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 3-5, 7-8, 10-12, 14-17 and 24-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding a "constant pressure" limitation recited in independent claims 1 and 14, specification does not appear to support this feature (in fact it appears that this limitation was added as a preliminary amendment of June 28, 2004).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 25, 7-8 and 10-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 25 provides for the use of a container having air-tight space, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced. Claim 25, 7-8 and 10-12 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd. App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claims 7-8, 10-12 and 25 recite structural limitation that do not further limit the method steps.

NOTE: It appears that claims 7-12 were originally drawn to a device associated with a claimed method. Newly added claim 25 is similar to amended claims 7-12. It is suggested that applicant submits separate set of claims drawn to a recited device.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-5 and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sitterly (DE 4422190) in view of Ribereau-Gayon et al (HANDBOOK OF ENOLOGY).

In regard to claim 1 and 14, Sitterly discloses a method for production of sparkling alcoholic beverages such as champagnes and sparkling wine in the air-tight space container (Abstract). Sitterly also discloses that sparkling alcoholic beverage is made by the method of "bottle fermentation" or still alcoholic beverage is carbonated using "shifting" of carbon dioxide (Abstract). Sitterly also discloses that fermentation, stabilization, and filtration are carried out in the same air-tight container comprising a plug and sealing means (Abstract). Sitterly also discloses that beverage may be dispensed using separate dispensing device, and therefore discloses that the beverage is kept in the same air-tight container until consumption (Abstract). In regard to claim 17, it is noted that filtration is apart of stabilization process, and therefore filtration and stabilization are performed simultaneously. In regard to claim 24, Sitterly disclose that filtration is performed during dispensing at the time of consumption due to the presence of microfilter (8) at the end of the tube (7) (Abstract, claim 3, Figure).

In regard to claims 1 and 14, Sitterly does not specifically disclose preparation of the base mix. However, Sitterly disclose preparation of alcoholic beverages by the "fermentation in bottle method". Ribereau-Gayon et al disclose a method for production of sparkling alcoholic beverages (champagne) using method of bottle fermentation. Ribereau-Gayon et al disclose preparation of cuvee by blending wines of different origins and quality and then adding liqueur de triage (sugar and yeast solution) (pp.421-

422). Since Sitterly discloses a method for production of sparkling/carbonated alcoholic beverages, and Ribereau-Gayon et al disclose preparation of the base mix by blending wines of different origins and quality and then adding liqueur de tirage (sugar and yeast solution) for the secondary fermentation, one of ordinary skill in the art would have been motivated to modify disclosure of Sitterly and to employ the step of preparation of a base mix. One of ordinary skill in the art would have been motivated to do so, since the step of base mix preparation is a necessary step in a production of sparkling/carbonated alcoholic beverages. One of ordinary skill in the art would also have been motivated to do so, since the step of base mix preparation was a well established practice in the art.

In regard to claims 1 and 14, Sitterly does not specifically disclose the constant pressure in the air-tight container. However, modified Sitterly discloses preparation of sparkling/carbonated alcoholic beverages as claimed, starting materials as claimed, maintaining the beverage in the air-tight container until the consumption as claimed. Although the references do not specifically disclose every possible quantification or characteristic of its product, including constant pressure in the air-tight container, the pressure in the air-tight container would have been expected to be constant absent any clear and convincing evidence and/or arguments to the contrary. The references discloses the same starting materials and methods as instantly (both broadly and more specifically) claimed, and thus one of the ordinary skill in the art would recognize that the pressure in the air-tight container, among many other characteristics of the referenced product, would have been an inherent result of the method and product disclosed therein. The Patent Office does not possess the facilities to make and test the

referenced product, and as reasonable reading of the teachings of the reference has been applied to establish the case of obviousness, the burden thus shifts to applicant to demonstrate otherwise.

In regard to claims 3-4 and 15-16, Sitterly does not specifically disclose addition of pre-dosed filling solution. However, However, Sitterly disclose preparation of sparkling/carbonated alcoholic beverages. Ribereau-Gayon et al disclose further addition of liqueur d'expedition or dosage (i.e. final dosage) to adjust the sugar concentration of sparkling alcoholic beverage (p. 424). Ribereau-Gayon et al disclose that addition of dosage (sugar syrup and wines) is a method of improving the quality of wines (p. 424). Ribereau-Gayon et al disclose that the quality of dosage (sugar and wines) and its preparation formula effect quality of the final product (p. 424). Since Sitterly discloses a method for production of sparkling/carbonated alcoholic beverages, and Ribereau-Gayon et al disclose further addition of liqueur d'expedition or dosage (i.e. final dosage) to sparkling alcoholic beverage (p. 424)., one of ordinary skill in the art would have been motivated to modify disclosure of Sitterly and to employ the step of final dosage as disclosed by Ribereau-Gayon et al. One of ordinary skill in the art would have been motivated to do so, in order to adjust the sugar concentration of sparkling/carbonated alcoholic beverages as taught by Ribereau-Gayon et al. One of ordinary skill in the art would also have been motivated to do so, in order to improve the quality of the final beverage as taught by Ribereau-Gayon et al.

In regard to claims 5, Sitterly does not specifically disclose immobilization of yeast culture. However, However, Sitterly disclose preparation of sparkling/carbonated

alcoholic beverages in the same air-tight container. Ribereau-Gayon et al disclose "bottle fermenting with yeast contained and immobilized in small calcium reticulated alginate balls ... [w]hen the bottle is turned over, the deposit almost immediately settles against crown cap. Riddling is no longer necessary" (P. 423). Since Sitterly discloses a method for production of sparkling/carbonated alcoholic beverage that is kept in the same air-tight container until consumption, and Ribereau-Gayon et al disclose using immobilized yeast to avoid the step of collecting the yeast deposit, one of ordinary skill in the art would have been motivated to modify disclosure of Sitterly and to employ immobilized yeast in order to avoid the step of collecting the yeast deposit as taught by Ribereau-Gayon et al.

Claims 7-8, 10-12 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sitterly (DE 4422190) in view of Ribereau-Gayon et al (HANDBOOK OF ENOLOGY) and Johnston (US 3,438,553).

Regarding claims 25, 7-8 and 10-12 see rejections above under 35 U.S.C. 101 and 35 U.S.C. 112, first paragraph.

In regard to claim 25, Sitterly discloses that the air-tight container having the inner surface suitable for contact with foodstuff and beverages to perform steps a) through d) (see rejection above). Sitterly discloses air-tight container comprising a plug and sealing means (Abstract, Figure). Sitterly discloses a pipe (tube) fixed in the lower end of the plug head having an axis coinciding with an axis of the container and having a lower open end in proximity to a lower end part of the container (Abstract, Figure). Sitterly also discloses that the container is cylindrical, the lower end part is spherical

(Abstract, Figure). In regard to claim 7, Sitterly discloses that the air-tight container has a filtering element fitted inside the lower end of the pipe.

In regard to claim 8, it is noted that Sitterly discloses filtering during preparation of sparkling beverages in the air-tight container as instantly claimed. Even though Sitterly does not specify particular pore size of the filter, one of the ordinary skill in the art would expect to employ the same filter as claimed, since Sitterly discloses the same raw materials, the same final product, similar air-tight container and the same method steps.

Sitterly does not disclose particular structural components of air-tight container.

It is noted that structural limitations as claimed are close to the structure of beer kegs. Johnston discloses a device for drawing liquids such as beer from beer kegs using gas to drive the fluid from the container. The device comprising an adapter semi-permanently installed in the keg, containing a gas check valve (Abstract, Fig. 1). Thus Johnston discloses multifunctional plug head is connected to a monitoring and controlling device.

In regard to claim 10, Johnston discloses that the container is connected via valve 28 to a gas supply tank 30 (Col. 4 lines 38-39, Fig. 1).

In regard to claims 11, Johnston discloses that plug head is connected to the outlet of fermentation tank (Fig. 1)

In regard to claim 12, Johnston discloses cylindrical shape of the container.

Since Sitterly discloses a method for production of sparkling alcoholic beverages such as champagnes and sparkling wine in the air-tight space container where

beverage may be dispensed using separate dispensing device, one of the ordinary skill in the art would have been motivated to modify disclosure of Sitterly and employ dispensing device as taught by Johnston. One of the ordinary skill in the art would have been motivated to do so, since both Johnston and Sitterly teach carbonated beverages in air-tight sealed container and its dispensing. Particular shape of the container's wall would not serve as a patentable feature over the prior art.

Response to Arguments

Applicant's arguments with respect to claims 1 and 5 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Stulii whose telephone number is (571) 272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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VS


KEITH D. HENDRICKS
SUPERVISORY PATENT EXAMINER